IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 250 of 2005.

Date of decision: 09.01.2006.

Prem Singh & Anr. ... Appellant

Versus

Gobindu & Anr. … Respondents

Coram :

The Hon'ble Mr. Justice V.M. Jain, Judge.

Whether approved for reporting?[1] Yes.

For the appellant : Mr. K.D. Sood, Advocate.

For the respondents: Mr. T.S. Chauhan, Advocate, for respondent No. 1.

Mr. Ashutosh Burathoki, Addl. A.G., for respondent No. 2.

V.M. Jain, J. (Oral):

This Regular Second Appeal has been filed by the defendants against the judgment and decree dated 18.4.2005 passed by the District Judge, Bilaspur, whereby the appeal filed by the plaintiff was allowed and the Collector was directed to consider the question afresh and decide the same within six months, keeping in view the observations made in the judgment.

The facts which are relevant for the decision of the present appeal are that Gobindu, plaintiff, had filed a suit for declaration claiming himself to be owner in possession of the suit land and that the said land

[1]Whether reporters of Local Papers may be allowed to see the judgment?

was washed away during floods in 1976, whereupon he applied for exchange of the government land comprised in Khasra No. 322/304/1 belonging to the State Government. It was alleged that the Patwari Halqua in connivance with defendant No.2 committed mischief and prepared wrong Tatima in respect of the land comprised in Khasra No. 320/304, which was a Dhank and was incapable of cultivation and it was further alleged that the said Patwari gave demarcation and possession of the land comprised in Khasra No. 322/304/1 at the spot and the plaintiff was still in possession of the said land. It was further alleged that the plaintiff made the said land fit for cultivation by putting hard labour and money. It was alleged that later on defendant No. 2, being a big landlord, in connivance with the revenue staff, illegally had managed to get his land exchanged in lieu of land comprised in Khasra No. 322/304, which was sanctioned in favour of defendant No. 2. It was alleged that the plaintiff came to know of the said illegal allotment and moved an application before the Assistant Collector not to implement the illegal order and the complaint was also filed before the Deputy Commissioner. It was alleged that the plaintiff approached defendant No.1 to accept the change of mutation in his favour and also approached defendant No. 2 not to interfere in his possession. It was further alleged that the plaintiff be declared owner in possession of Khasra No. 322/304/1 measuring 3-1 Bighas, in place of Khasra No. 320/304 measuring 3-1 Bighas, as shown in the Tatima prepared by the Patwari and the mutation No. 156 be cancelled and the same be restored to the State of H.P. and the defendants be restrained from interfering in the possession of the plaintiff over the suit land comprised in Khasra No. 322/304/1. It was further

prayed that the order dated 19.3.1990 be declared null and void and defendant No. 2 be restrained from interfering in Khasra No. 304/286/3.

In the written statement, defendant No.1 took up various preliminary objections. On merits, it was alleged that the plaintiff had moved an application for exchange in the year 1977. However, it was denied that Khasra No. 322/304/1 was given to the plaintiff. On the other hand, it was pleaded that the said Khasra No. was owned and possessed by the State. It was denied that Patwari Halqua had prepared a wrong Tatima of Khasra No. 320/304. The possession of the plaintiff over Khasra No. 322/304/1 was also denied. It was also denied that the entries in the revenue record were contrary to the position at the spot. It was also denied that defendant No. 2 in connivance with the revenue staff had illegally got the land exchanged comprised in Khasra No. 304/286/3. It was alleged that defendant No. 1, being the owner of Khasra No. 322/304/1, could not be restrained. Defendant No. 2 filed a separate written statement and took up various preliminary objections. On merits, it was alleged that the plaintiff was neither the owner nor in possession of the land bearing Khasra No. 18. It was also denied that the plaintiff was a victim of floods. It was also denied that the plaintiff had moved an application for exchange. It was also denied that the Patwari Halqua had committed a mischief or had prepared a wrong Tatima. It was alleged that the plaintiff had no right to claim the land, which was allotted to the replying defendant, which was owned and possessed by him. Other allegations contained in the plaint were also denied and it was prayed that the suit be dismissed.

After hearing both sides and perusing the record, the learned trial Court dismissed the suit of the plaintiff, holding that the

plaintiff was not owner in possession of Khasra No. 322/304/1 and was not entitled to any permanent prohibitory injunction. Aggrieved against the same, the plaintiff filed an appeal before the District Judge. The learned District Judge, after hearing both sides and perusing the record, vide judgment and decree dated 18.4.2005, accepted the appeal of the plaintiff, set aside the judgment and decree of the trial Court and the Collector was directed to consider the question afresh and decide the same within six months, keeping in view the observations made in the judgment. Aggrieved against the same, defendants No. 2 and 3 filed the present Regular Second Appeal in this Court.

Notice was ordered to be issued to the plaintiff – respondent and the records were also requisitioned.

I have heard the learned counsel for the parties and have gone through the record carefully.

The learned counsel appearing for the defendants – appellants submitted before me that instead of deciding the appeal on merits, the learned District Judge had directed the Collector to decide the matter afresh. It was submitted that the order passed by the learned District Judge is contrary to law. On the other hand, the learned counsel for the plaintiff – respondent submitted before me that the aforesaid judgment and decree dated 18.4.2005 were passed by the learned District Judge on the basis of the compromise and as such, no appeal was maintainable against the same, nor the defendants – appellants could be allowed to challenge the same in this Court by way of Regular Second Appeal.

After hearing the learned counsel for the parties and perusing the record, in my opinion, the present appeal must be allowed,

the judgment and decree dated 18.4.2005 passed by the learned District Judge must be set aside and the case be remanded to the learned District Judge for decision afresh in accordance with law.

When the appeal came up for hearing before the learned District Judge, arguments on merits were addressed by the learned counsel appearing for the plaintiff – appellant. It is noted in para-14 of the judgment passed by the learned District Judge that during the course of arguments, the learned District Judge had suggested to the learned counsel for the plaintiff – appellant that the matter can be set right if the Collector considers the pleas of the plaintiff and redecide the matter after spot inspection. Thereupon, the learned counsel appearing for the plaintiff – appellant was agreeable to this suggestion and it was submitted that the matter may be referred to the Collector for reconsideration. It is further recorded in para-14 of the judgment that this suggestion was not opposed by the learned counsel for the defendants – respondents on the ground that in case the Court is satisfied, it may pass any appropriate order it deems proper. It was thereupon that without deciding the appeal on merits, the learned District Judge directed the Collector to redecide the matter, after spot inspection, keeping in view the observations made in para-15 of the judgment.

From a perusal of the above, in my opinion, it will be clear that the aforesaid judgment and decree dated 18.4.2005 passed by the learned District Judge could not be said to be a decision based on compromise. As referred to above, during the course of arguments, the learned District Judge had made a suggestion which was accepted by the learned counsel appearing for the plaintiff and the counsel for the defendants did not oppose the same on the ground that in case Court is

satisfied, it may pass any appropriate order it deems proper. From this observation made by the learned District Judge, in para-14 of the judgment, in my opinion, it could not be said that the learned counsel for the defendants had compromised the matter with the other side and/or that the learned District Judge had passed the aforesaid judgment and decree on the basis of any compromise between the parties. On the other hand, the suggestion was given by the learned District Judge and the same was accepted by the counsel for the plaintiff. However, the counsel for the defendants appear to have stated before the learned District Judge that he may pass appropriate orders as may be deemed proper. This, in my opinion, would not mean that the learned counsel for the defendants had agreed to the order proposed by the learned District Judge. Be that as it may, it could not be said that the judgment and decree dated 18.4.2005 were based on compromise and/or on that account, the present appeal was not maintainable.

As referred to above, in the plaint the plaintiff had challenged various orders/mutations etc. and had also sought a relief of injunction. The suit was dismissed by the learned trial Court. In the appeal filed by the plaintiff, the learned District Judge was required to decide the appeal on merits, keeping in view the various issues involved in this case. Without going into the legality or otherwise, of the action of the Collector and other revenue staff, in my opinion, no case was made out for the learned District Judge to have directed the Collector to reconsider the matter, after spot inspection, keeping in view the observations made in the said judgment. In my opinion, the learned District Judge, while passing the aforesaid judgment and decree dated 18.4.2005 had exceeded his jurisdiction and absolutely no case was

made out for passing the said judgment and decree by the learned District Judge.

In view of the detailed discussion above, the present appeal is allowed, the judgment and decree dated 18.4.2005 passed by the learned District Judge are set aside and the case is remanded to the learned District Judge for deciding the appeal afresh in accordance with law.

Parties through their counsel are directed to appear before the learned District Judge on **9th March, 2006**, for further proceedings in accordance with law.

CMP No. 435 of 2005:

In view of the orders passed in the main appeal, the stay order dated 25.5.2005, shall stand vacated and the application stands disposed of.

(V.M. Jain),
Judge

January 09, 2006
(BSS)